

REMARKS

Claims 1-2 and 4-21 are now pending and stand rejected. Claims 22-28 are withdrawn from consideration. By this amendment, Applicant has amended claims 1, 7, 8, and 18. Applicant also demonstrates reasons why the amended claims 1, 7, 8, and 18, as well the claims that depend from these amended independent claims are distinct from the asserted art. In view of the above amendments to the claims and the legal reasoning urged below to demonstrate why the 35 U.S.C. § 103 rejections are improper, Applicant respectfully requests the Examiner to reconsider the outstanding rejections and to withdraw them.

Section 103 Rejections

In paragraph II of the office action, the Examiner rejects claims 1-2, 4-5, 7-13, 15-18, and 20-21 as unpatentable over U.S. Patent No. 6,374,357 to Mohammed et al., and further in view of Brody's U.S. Publication No. 2001/0051928. In paragraph III of the office action, the Examiner has rejected claims 6, 14, and 19 under 35 U.S.C. Section 103(a) as unpatentable over U.S. Patent No. 6,374,357 to Mohammed et al., as applied to claims 1, 8, and 18 and further in view of U.S. Patent No. 6,948,070 to Ginter et al.

Applicant respectfully requests the Examiner to reconsider the bases for the rejections under 35 U.S.C. Section 103 based on the criteria and governing law urged above. The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be "expansive and flexible" and "functional." But, the standard is not controlling. Instead the various noted factors only "can" or "might" be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

"[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents**; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Applicant respectfully submits that claims 1, 7, 8, and 18 are amended to recite a limitation simply not met by the combination of references asserted by the Examiner. Applicant respectfully requests the Examiner to reconsider the claims here and the rejections in view of the combinations of references for the reasons that **the improvement is more than the predictable use of prior art elements according to their established functions.** For example, Brody has almost no relevance to portable devices and any operations that look for malicious code. Brody is directed simply to preventing illegal distribution of programs. Mohammed does look for malicious code, however, only for digital signatures. It does not actually teach analyzing the code itself to detect malicious activity as is claimed here. Claims 1, 8, and 18, as amended, emphasize these distinctions. The remaining claims, variously depend on claims 1, 8, and 18, and are distinct at least for the same reasons by which claims 1, 8, and 18 are distinct.

CONCLUSION

In light of the above amendments and remarks, Applicant respectfully requests reconsideration of the rejected claims and solicits their allowance. In the event, an interview is

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useful in resolving any issues, the Examiner is invited to telephone the undersigned representative.

Respectfully submitted,

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